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September 24, 2001

Via Facsimile and FedEx Tracking No. 1055-5494-0

Mr. K. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

RE: Attachment to Petition to Intervene of Dynegy Inc.
(Chattanooga Gas Company- Docket No. 01-00761)

Dear Mr. Waddell:

Enclosed for filing please find the original and thirteen copies of the Georgia Public Service Commission's order in Atlanta Gas Light Company, Docket No. 14060-U, which is referenced in the Petition to Intervene of Dynegy, Inc., footnote 2, along with a filing fee check in the amount of \$25.00. Please provide me with a file stamped copy in the enclosed self addressed stamped envelope.

This letter and the AGLC order was served on all parties to this docket via facsimile on September 24, 2001.

Very truly yours,

WATSON, SPENCE, LOWE AND CHAMBLESS, LLP



Robert J. Middleton, Jr.

RJMjr/af
Enclosures

COMMISSIONERS:

LAUREN "BUBBA" McDONALD, JR., CHAIRMAN
ROBERT B. BAKER, JR.
DAVID L. BURGESS
BOB DURDEN
STAN WISE



DOCKET # 14060
DOCUMENT # 50186

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SEP 14 2001

FINAL ORDER

Docket No. 14060-U

In Re: Atlanta Gas Light Company's 2001-2004 Capacity Supply Plan

Record submitted: September 7, 2001

Decided: September 14, 2001

APPEARANCES:

On behalf of Atlanta Gas Light Company:

L. CRAIG DOWDY, ESQ.

On behalf of the Advocate Staff of the Georgia Public Service Commission:

JEFFREY C. STAIR, ESQ.

HELEN O'LEARY, ESQ.

On behalf of the Consumers' Utility Counsel Division:

BRANDON MARZO, ESQ.

On behalf of Dynegy, Inc.

ROBERT J. MIDDLETON, JR., ESQ.

On behalf East Tennessee Natural Gas Company:

ANNE W. LEWIS, ESQ.

On behalf The New Power Company:

CHARLES B. JONES, ESQ.

On behalf of SCANA Energy Marketing, Inc.:

ROBERT C. PLATT, ESQ.
STACY JENKINS, ESQ.

On behalf of Shell Energy Services Company:

GREGORY K. LAWRENCE, ESQ.

On behalf of Southern Natural Gas Company:

JOHN C. GRIFFIN, ESQ.

On behalf of Southstar Energy Services LLC.

ROBERT B. REMAR, ESQ.

On behalf of Cove Point LNG L.P. and Transcontinental Gas Pipeline Corp.

CHARLES W. WHITNEY, ESQ.
JIM HERMANCANCE, ESQ.

ORDER

I. STATEMENT OF PROCEEDINGS

A. Jurisdiction

On October 6, 1998, pursuant to O.C.G.A. § 46-4-156, the rates of Atlanta Gas Light Company (also referred to herein as “AGLC” and “Company”) for commodity sales service were no longer subject to the Georgia Public Service Commission’s (“Commission’s” or “commission’s”) approval. The filing made in Docket No. 14060-U constitutes AGLC’s first complete capacity supply plan under O.C.G.A. § 46-4-155(e)(3), which states that:

At least every third year following the date when the rates for commodity sales service within a delivery group or groups become no longer subject to commission approval nor to the provisions of code section 46-2-26.5, the electing distribution company shall file on or before August 1 of such year, a capacity supply plan which designates the array of available interstate capacity assets selected by the electing distribution company for the purpose of making gas available on its system for firm distribution service to retail customers in such delivery group or groups.

For purposes of this proceeding, “interstate capacity assets” are defined in O.C.G.A. § 46-4-155(e)(1) specifically to mean interstate transportation and out-of-state gas storage capacity.

On August 1, 2001, Atlanta Gas Light Company, an electing distribution company pursuant to the “Natural Gas Competition and Deregulation Act,” O.C.G.A. § 46-4-150, *et seq.*, filed its plan with the Commission for its approval. Georgia law requires a public hearing on an electing distribution company’s capacity supply plan proposal not less than 10 days after the utility’s filing. O.C.G.A. § 46-4-155(e)(4). The burden of proof is placed on the electing distribution company to demonstrate that the capacity supply plan it has proposed is appropriate. *Id.* Not later than 45 days after the electing distribution company’s filing, the Commission must issue an order either approving the capacity supply plan as filed or adopting a different capacity supply plan. O.C.G.A. § 46-4-155(e)(5). Failure to adopt a capacity supply plan by the 45th day, which, for purposes of this case falls on September 14, 2001, results in the electing distribution company’s proposed capacity supply plan taking effect by operation of law. *Id.*

B. Proceedings

On June 12, 2001, the Commission issued a Procedural and Scheduling Order in which the procedures that were to be followed in conjunction with the hearing of the Company’s 2001

Capacity Supply Plan (also referred to herein as "Plan") were identified along with corresponding dates on which designated events were to occur. On August 1, 2001, as set forth in this Procedural and Scheduling Order, the Company filed its Plan as scheduled. The filing made by AGLC on that occasion is comprised of two volumes. The first volume included the pre-filed testimonies and proposed exhibits of Ms. Angela C. Bell, a former employee and consultant to AGLC; Mr. George Grey, Vice-President, System Optimization, of the Company's affiliate, Sequent Energy Marketing, L.P. ("Sequent"); Mr. Thomas Y. Choi, a consultant and Vice President of Altos Management Partners, Inc.; and Mr. Robert Stallings, Supervisor of Gas Operations for AGL Service Company, also an affiliate of AGLC; and Mr. Jay Sutton, Director of Design and Construction Management, AGL Service Company. The second volume contained the Company's response to the Minimum Filing Requirements that were previously established by the Commission.

On August 24, 2001, the Advocate Staff of the Georgia Public Service Commission ("Staff") pre-filed the testimonies of three witnesses: Mr. Richard W. LeLash, Ms. Michelle L. Thebert, and Mr. Troy Willis. On this same day, Mr. David L. Cruthirds pre-filed testimony on behalf of Dynegy Inc. ("Dynegy"); Mr. Thomas J. Norris pre-filed testimony on behalf of Shell Energy Services Company ("Shell"); Mr. Michael P. Nieman pre-filed testimony on behalf of Southstar Energy Services, L.L.C.; Dr. Julius A. Wright and the panel consisting of Mr. Michael Wingo, Ms. Rose Jackson and Mr. Joseph Lynch pre-filed testimony on behalf of SCANA Energy and Marketing, Inc. ("SCANA" or "SEMI")

In an order issued on August 28, 2001, the Commission directed AGLC to enter into a protective agreement with SCANA to allow SCANA to examine two contracts designated as trade secret by AGLC—a Service Agreement between AGL Service Company and Sequent (also referred to herein as "Service Agreement") and a Gas Storage Asset Bailment Agreement between AGLC and Sequent ("also referred to herein as "Bailment Agreement"). Pursuant to that same order, SCANA was permitted to pre-file supplemental testimony in this matter. The Supplemental testimony was presented through witnesses Mr. Michael Wingo, Ms. Rose Jackson, Dr. Julius Wright and Mr. Joseph Lynch on August 28, 2001.

Although the Company was permitted in the Procedural and Scheduling Order to offer the testimony of any rebuttal witnesses at the hearing without the need to first pre-file testimony, on August 31, 2001, Ms. Angela C. Bell; Mr. George Grey, Mr. Thomas Y. Choi and Mr. Robert Stallings filed joint rebuttal testimony. Thereafter, on September 5, 2001, Mr. Steven Moore, Managing Director in the Engineering and Construction division of AGL Service Company, filed additional rebuttal testimony on AGLC's behalf.

On September 6, 2001, the Commission commenced the first day of a two-day hearing on the 2001 Capacity Supply Plan filed by the Company. On September 11, 2001, the parties filed briefs and proposed orders. Thereafter, on September 14, 2001, the Commission voted on a Final Order in this docket at a Special Administrative Session held for this purpose.

II. ATLANTA GAS LIGHT COMPANY'S 2001 CAPACITY SUPPLY PLAN

As stated above, the Company's 2001 Capacity Supply Plan filing was made pursuant to the statutory requirement set forth in O.C.G.A. § 46-4-155(e)(3). O.C.G.A. § 46-4-155(e)(6) which provides that any capacity supply plan approved or adopted by the commission shall:

- (A) Specify the range of requirements to be supplied by interstate capacity assets;
- (B) Describe the array of interstate capacity assets selected by the electing distribution company to meet such requirements;
- (C) Describe the criteria of the electing distribution company for entering into contracts under such array of interstate capacity assets from time to time to meet such requirements; provided, however, that a capacity supply plan approved or adopted by the commission shall not prescribe the individual contracts to be executed by the electing distribution company in order to implement such plan;
- (D) Specify the portion of the interstate capacity assets which must be retained and utilized by the electing distribution company in order to manage and operate its system.

With respect to its obligations pursuant to O.C.G.A. § 46-4-155(e)(6)(A), the Company has stated that, based upon its forecast of demand requirements for the three years of its Plan, the Deliverability factor, and the on-system peaking, AGLC will need 1,685,811 Dth/day for Year 1; 1,746,189 Dth/day for Year 2; and 1,807,780 Dth/day for Year 3 of interstate capacity. (Transcript [Tr.] 81-82).

In attempting to describe the array of interstate capacity needed as called for in O.C.G.A. § 46-4-155(e)(6)(B), AGLC has claimed a need in Years 1, 2 and 3 of 1.07 MDth of firm transportation; 0.517 MDth of production storage; and 0.449 MDth of market storage. (Tr. 82). For bundled peaking services, the Company is alleging that it needs 0.167 MDth in Year 1; 0.231 MDth in Year 2; and 0.291 MDth in Year 3. (Tr. 82).

Regarding the criteria to be used by the Company in entering into contracts under such array of interstate capacity assets as contemplated by O.C.G.A. § 46-4-155(e)(6)(C), AGLC has proposed making an assessment of options selected by using its evaluation of "best cost criteria," which considers

"[A]ll relevant factors including, but not limited to, total cost, terms, and conditions, operational efficiencies, price volatility, reliability and diversity of supply, reliability of capacity supply that would be used to receive and redeliver gas from the origin of the interstate storage, peaking and transportation services to consumers' burner tips." (Tr. 92).

Finally, with respect to the specification that must be made pursuant to O.G.G.A. § 46-4-155(e)(6)(D), the Company proposes that it retain in Years 1, 2 and 3 interstate capacity assets in the amount of 175,854 Dth/day for firm transportation; 138,442 Dth/day of withdrawal capability for production storage; and 129,308 Dth/day of withdrawal capability for market production, all to be available for use by AGLC in maintaining and operating its system. (Tr. 82).

Although it was not expressly acknowledged in its filing, it should be noted that the Company was subject to additional criteria for meeting its burden of proof to demonstrate that the capacity supply plan it has proposed is appropriate. In an order issued by the Commission in Docket No. 9305-U, the following additional interim capacity planning procedures and criteria were to be employed by the Company in any plan that was to be filed through September 15, 2001:

- (a) Contracts shall be selected on a best cost criteria evaluation, considering all relevant factors including but not limited to, transportation cost, terms and conditions, operational efficiencies, and reliability of capacity supply from the interstate transportation to the consumer's burner tip. **AGLC shall provide documentation to the Staff demonstrating its compliance with this criteria;**
- (b) AGLC diligently shall seek to negotiate the shortest term of a contract that can be negotiated under existing laws, regulation and industry practice regarding the extension of existing contracts. **AGLC shall provide documentation to the Staff demonstrating its compliance with this criteria; and,**
- (c) AGLC diligently shall seek to negotiate for the inclusion of a "regulatory out clause" in new contracts. **AGLC shall provide documentation to the Staff demonstrating its compliance with this criteria.** (Emphasis added.)

(Order On Capacity Planning Procedures and Criteria and Procedural and Scheduling Order, issued on July 11, 2000, in Docket No. 9305-U).

III. ATLANTA GAS LIGHT COMPANY'S CASE PRESENTATION

In making its case in chief, the Company presented the direct testimony of witness Angela C. Bell regarding the Plan's Design Day forecast and the Annual Demand Throughput forecast. (Tr. 14-23). It also offered the direct panel testimony of witnesses George Grey, Thomas Y. Choi, and Robert Stallings regarding: The manner in which the filing was derived; the level of retained capacity deemed necessary by AGLC; the proposed deliverability factor, bundled peaking services deemed necessary by the Company; the request for proposals process employed in conjunction with obtaining contracts for the array in this filing; the role played by Sequent in this matter; and, issues pertaining to Cove Point and ANR storage facilities. (Tr. 75-119). As its final witness, the Company offered the testimony of Jay Sutton to detail system modifications that allegedly would be needed if either of two referenced scenarios were selected for the redelivery of bundled peaking services. (Tr. 427-436).

The Company also offered each of these witnesses except for Mr. Sutton as a rebuttal panel. Mr. Steve Moore, AGL Service Company Managing Director of Engineering and Construction also testified with this panel. The purpose of the rebuttal panel was to refute allegations made by Staff and Intervenors regarding the Company's proposed Plan. Mr. Moore's testimony was offered to refute allegations made by SCANA regarding the Sequent Service Agreement and Bailment Agreement. (Tr. 816-864).

All of the above witnesses were made available for cross-examination and redirect examination as appropriate.

The Company also tendered a number of exhibits into evidence in this matter, including the Minimum Filing Requirements (AGLC Exhibit 1) that were prepared by or on behalf of the Company. Each of the witnesses and the panel of witnesses offered on behalf of AGLC sponsored exhibits with their respective testimonies, with the exception of Mr. Moore. These exhibits were marked and have been made part of the record in this docket.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the testimony of all witnesses, the documentary evidence introduced at the hearing, and an assessment of the credibility of the witnesses and evidence at this proceeding, the Commission hereby makes the following findings of fact and conclusions of law with respect to the issues involved in this case:

A. Adoption of a 2001-2004 Capacity Supply Plan

As previously stated in the "Jurisdiction" subpart of Section 1 of the Order, O.C.G.A. § 46-4-155(e)(4) places the burden of proof on the electing distribution company, Atlanta Gas Light Company—to demonstrate that the capacity supply plan it has proposed is appropriate. As set forth more fully below, the record in this docket is replete with information pointing to the existence of conflicts of interest between AGLC and Sequent and potentially Sequent and other AGL Resources affiliates. This, coupled with the existence of preferences given by the Company to affiliates and conflicting testimony in the record of this proceeding regarding said relationships, leaves the Commission with no other choice than to find that the Company has failed to meet its burden that the design day demand forecast and resulting need for the projected array of additional interstate capacity assets are indeed appropriate. In lieu of the Company's proposed plan, the Commission adopts its own plan as set forth in more detail herein.

B. Atlanta Gas Light Company's Design Day and Annual Throughput Forecasts

Through the testimony of witness Angela C. Bell, the Company seeks Commission approval of two forecasts: a design day demand forecast and an annual demand throughput forecast. (Tr.15). As performed by Ms. Bell, the annual demand forecast is built on the premise of normal weather conditions and estimates the total requirements for the system throughout the year. (Tr.16). The design day forecast specifically targets the extreme weather conditions during which the entire system must operate at maximum capacity to ensure that all customers will be served during the periods of highest demand. (Tr. 16). As set forth in a series of schedules contained in AGLC Exhibit 2, Ms. Bell forecasted that design day usage will grow at a higher rate than annual demand throughput. (Tr. 20). In doing so, she alleged that the method that she used to forecast design day sendout is identical to the methodology that has been applied in previous years. (Tr. 17).

Ms. Bell projected design day usage to grow on average at an annual rate of 2.26% from 2001-2006. (Tr. 19) (AGLC Exhibit 2, Schedule 6). Annual demand throughput, on the other hand, was projected by Ms. Bell to grow at an average rate of only 0.27% during the same period. (Tr. 19). As reflected on AGLC's Exhibit 2, Schedule 7, the forecasted design day sendout for 2002 is 2.44 MDt; for 2003 is 2.50 MDt and for 2004 is 2.55 MDt. The annual demand throughput for this same period is 141.9, 142.3, and 142.8, respectively. (AGLC 2, Schedule 7).

The overwhelming majority of the evidence presented by virtually all of the witnesses who testified on the annual demand throughput did not take issue with Ms. Bell's forecast. However, as recognized by Staff expert witness Richard W. LeLash, a simple reasonableness check of the forecast for design day demand revealed that it may be overstated. (Tr. 479). By reviewing work papers for the demand forecast developed in Docket 9305-U, Mr. LeLash testified that it was apparent to him that contrary to the Company's assertion that the current forecast methodology is the same as that applied in prior years, there were significant variations. (Tr. 491-492). The variations he found to be apparent included a difference in the size of the delivery pool; a variation in data points between the 1998 forecast and the one presented in this docket; the exclusion of outliers that were represented not to fit the model; and alterations in heating degree days used to calculate the coldest weather over the past five years. (Tr. 492-494). As a consequence, Mr. LeLash ultimately arrived at the conclusion that based upon the Company's forecast procedures, work papers and documentation, the firm demand forecasted for 2002 alone is unreliable and maybe overstated by as much as 165 MDth. (Tr. 494-495).

This over-projection in design day sendout is particularly troubling in light of the existence of the AGLC-Sequent Bailment contract (Staff's Exhibits 2 and 4) that permits the Company's affiliate, Sequent, to make use for its own profit of any "unused" capacity assets held by the Company for the purposes of system optimization to realize gains and thus creates a conflict of interest since AGLC also relies on Sequent for advice regarding how much capacity to acquire to meet its system needs. Based on this factor, the testimony from Ms. Bell upon cross-examination that she was retained by AGLC to prepare forecasts for this docket in February 2001—after the date on which the RFP (Staff's 5) went out calling for 166,700 Dth/day in incremental bundled

peaking services, the testimony of Mr. LeLash, and the Commission's credibility determination the Commission finds that the Company's design day forecast is unreliable.

Notwithstanding CUCD's endorsement of AGLC's need for additional capacity, the Commission finds that the Company has failed to demonstrate that the increase in design day demand projected for years 2002-2004 is warranted. The Company is directed to keep in place the same level of interstate capacity assets to serve Georgia citizens that were approved in Docket 9305-U, as amended, with the array of interstate assets and the range of requirements already approved therein. However, if the Company believes that more than the current volumes are necessary in the future, AGLC may file an amendment to its capacity plan.

The Commission finds that AGLC's annual demand throughput forecast is appropriate.

In addition, the Company's Dedicated Design Day Calculation ("DDDC") Factor is based on the approved peak day forecast. Since the Company has not adequately justified the peak day forecast, the Commission finds that under normal circumstances the Company should recalculate the DDDC Factors for all customers and provide this information to marketers to allow them to pass the appropriate charges on to the ratepayers of Georgia. Considering that the DDDC was modified very recently, however, to change it again so soon may cause unnecessary customer confusion. In the future, however, all DDDC recalculations shall be based on the last peak day forecast approved in the capacity plan.

C. The Company's Deliverability Factor/Reserve Margin

In support of AGLC's Capacity Supply Plan, the panel testimony of Grey, Choi and Stallings calls for a minimum annual Deliverability Factor of 5%, which equates to 121,876 Dth/day of deliverability based upon a design day forecast of 2.437 MDth/day for FY 2002 (Tr. 87). As explained in the testimony, the purpose of having a deliverability factor is to provide an extra measure of reliability to the system to ensure that firm end-use customers do not experience a service disruption on the coldest days of the year. (Tr. 86). The panel also provided testimony that the deliverability factor should be allowed to exceed 5% of design day if the Company—not the Commission—were to determine that new capacity options such as a new liquid natural gas ("LNG") plant or an interstate pipeline expansion are best suited to serve firm demand. (Tr. 88).

For the reasons set forth by Staff witness LeLash in his testimony and evaluating the testimony in light of the conflict of interest discussed previously, the Commission finds that the Company has failed to make a case for this increase in the deliverability factor beyond the 5%. The specific indicia supporting Mr. LeLash's representation in this regard are the lack of a design day having been experienced by the Company in the past 10 years, the existence of an adequate level of LNG storage balances to cover any late season design day conditions and sufficient levels of other storage that provide the flexibility to meet any demands placed on the system due to weather. (Tr. 495-499). As a consequence, the Company has failed to convincingly provide the

justification necessary for this Commission to accept the increase in deliverability factor proposed.

The Commission expressly prohibits the Company from exceeding the 5% deliverability factor without first making a request to do so and obtaining written approval by this agency authorizing such action.

D. Criteria for contracting for interstate capacity assets

Pursuant to O.C.G.A. 46-4-155(e)(6)(C), the Commission has the authority to describe the criteria of the electing distribution company for entering into contracts. In the Commission's July 11, 2000 Order on Capacity Planning Procedures and Criteria and Procedural and Scheduling order, the Commission established the following interim capacity planning procedures and criteria that were to be applied by the Company through September 15, 2001:

- (a) Contracts shall be selected on a best cost criteria evaluation, considering all relevant factors including but not limited to, transportation cost, terms and conditions, operational efficiencies, and reliability of capacity supply from the interstate transportation to the consumer's burner tip. AGLC shall provide documentation to the Staff demonstrating its compliance with this criteria;
- (b) AGLC diligently shall seek to negotiate the shortest term of a contract that can be negotiated under existing laws, regulation and industry practice regarding the extension of existing contracts. AGLC shall provide documentation to the Staff demonstrating its compliance with this criteria; and,
- (c) AGLC diligently shall seek to negotiate for the inclusion of a "regulatory out clause" in new contracts. AGLC shall provide documentation to the Staff demonstrating its compliance with this criteria.

(Order On Capacity Planning Procedures and Criteria and Procedural and Scheduling Order, issued on July 11, 2000, in Docket No. 9305-U).

Staff Witness Thebert recommended that the Commission adopt the above interim criteria as permanent criteria. In addition, she recommended that the Commission adopt additional criteria for Atlanta Gas Light Company for entering into interstate capacity, storage, and peaking contracts. After reviewing those additional proposed criteria, the Commission finds them to be reasonable; provided, however, that requiring a two-thirds marketer vote could inappropriately allow one marketer, or a small group of marketers, to block acquiring new capacity assets. The Commission finds that AGLC must have only a majority affirmative vote from active marketers by both number and market share. The Commission finds that since capacity is acquired for use by marketers to serve the marketers' customers and since marketers are required to pay for the capacity acquired by AGLC, it is reasonable to require that the capacity assets be acceptable to a

majority of marketers. Accordingly, the Commission modifies the proposed additional criteria to provide as follows:

1. AGLC shall be required to include all active certified marketers in the capacity planning process. In addition, AGLC shall offer a vote to all active certified marketers regarding AGLC's selection(s) of capacity assets. AGLC must have a majority affirmative vote from active certified marketers by both number and market share;
2. AGLC shall be required to follow the Commission-approved RFP Process;
3. AGLC shall not enter into new contracts that do not meet both the written criteria as set forth in this Order;
4. AGLC shall not enter into contracts with any entity, company, organization, or affiliate that did not submit a bid or proposal through the approved RFP process; and
5. AGLC's failure to comply with any of the criteria established by the Commission may, in the discretion of the Commission, result in the continuation of the Company's existing capacity supply plan until such time a proposed plan is submitted for consideration that meets the Commission's directives regarding contracting and related procedures.

E. The Request for Proposal Process Employed by AGLC

On January 30, 2001, AGLC issued a Request for Proposal ("RFP") seeking bids to supply the alleged shortfall of 166,700 Dth/day. AGLC received responsive bids on March 2, 2001. Following the receipt of the responsive bids, AGLC allowed its unregulated affiliate, Sequent, which was not even a bidder in the initial RFP, to view all of the proposals and "aggregate them to create an overall solution that meets AGLC's needs..."(Tr. 108). AGLC stated that Sequent provided the only offer that met the "best cost" solution.

The Commission has heard testimony from Staff and intervenors regarding the process that AGLC employed regarding its RFP process. Several parties stated in their pre-filed testimony that the RFP process used by AGLC caused confusion and potential conflicts of interests regarding AGLC's selection of Sequent. Witness Thebert stated in her testimony that "[i]n order to ensure that the ratepayers are getting the best deal possible on contracted capacity services, storage services, and peaking services, AGLC should be required to follow a formal bidding process for all interstate capacity assets." (Tr. 524). She recommended the following RFP process for all RFP(s) for contracting interstate capacity assets:

1. All RFP(s) shall be issued in a written document that shall include the criteria approved by the Commission for contracting with interstate capacity, storage, and/or peaking.
2. All RFP(s) shall expressly and conspicuously set forth the following:
 - a. The issuance date of the RFP;

- b. The date and time that the bidding will officially be closed;
 - c. The date(s) on which the proposals will be evaluated;
 - d. The date(s) on which bidding finalists will be notified to submit a “best and final” offer; and
 - e. The date on which the Company will notify all participants in the RFP process of the name of the bidder that was awarded the contract.
3. If proposals submitted in response to an RFP do not meet the criteria or interstate capacity assets requirements set forth in the RFP so as to form an adequate pool of bids to choose from, AGLC must issue another RFP and notify all of the prior bidders that the Company is accepting proposals that meet revised requirements.
 4. AGLC must file with the Commission a copy of any RFP(s) that is issued and provide a copy to each active certified marketer at the same time the RFP is released to other potential bidders.
 5. AGLC must make all responsive bids available to the Commission Staff and marketers for review prior to designating any bid as the winning proposal.
 6. Active certified marketers should be obligated to enter into a confidentiality agreement with AGLC prior to viewing any of the proposals.
 7. AGLC must make available any refreshed bids to all active certified marketers and the Commission Staff prior to selecting a proposal, if a bidder revises its offer at any time.

As previously stated, one of the criteria for entering into contracts under the array of interstate assets is that the contract be solicited by means of a Commission approved RFP process. The Commission finds that Advocate Staff’s recommendations, as supported by SCANA, Shell and CUCD regarding the RFP process for all future interstate capacity, storage, and/or peaking contracts are appropriate and AGLC shall be required to follow the above process.

F. Proposed Tariff Modifications—Firm and Interruptible Nominated Service Storage (“FINNS”) and Bundled Pipeline Peaking Service (“BPPS”)

AGLC filed two proposed tariff revisions in its 2001 Capacity Plan. The first tariff revision is Firm and Interruptible Nominated Storage Service (“FINSS”) in which AGLC appears to be seeking authority to include the ANR Storage Service in this rate schedule. The second tariff revision is Bundled Pipeline Peaking Service (“BPPS”), in which AGLC is proposing to include Cove Point LNG and, if approved, the additional bundled peaking service in this rate schedule. The Company filed the two proposed rate schedules on August 9, 2001. During its August 21, 2001, Administrative Session, the Commission ordered the suspension of both of these proposed tariff revisions for a period not to extend beyond February 8, 2002.

Since the effective date of the proposed tariff revisions has been suspended, the Commission finds that AGLC shall continue to maintain the temporary MARS accounts for both ANR Storage and Cove Point LNG for each marketer, as approved in the Commission’s April 19,

2001, Order until such time as a final decision is made by the Commission regarding the proposed tariff filings.

G. Marketer Accessible Retained Storage ("MARS") Assets

The Company seeks Commission approval to retain an array of interstate capacity assets that include firm transportation, production area storage and market area storage. (Tr. 94). As testified to by the Grey, Choi and Stallings panel, the firm capacity totals 175,854 Dth/day. The production area storage quantities include 138,442 Dth/day of withdrawal capability and 83,033 Dth/day of injection capability, with a total storage capacity of 6.86 Bcf. The market area storage quantities include 129,308 Dth/day of withdrawal capability and 34,657 Dth/day of injection, with a total storage capacity of 6.24 Bcf. (Tr. 94). This witness panel detailed that the proposed array of retained interstate capacity assets differed from those contained in the existing capacity supply plan in that firm transportation capacity on an annual basis increased by 22,442 Dth/day, while firm transportation capacity on a seasonal basis has been increased by 37,412 Dth/day. (Tr. 94). The production area storage withdrawal and injection capability and storage capacities have been increased by 22, 442Dth/day, 39,854 Dth/day, and 1.11Bcf, respectively. (Tr. 94).

In assessing whether the increased levels of retained storage proposed by the Company is appropriate, the Commission again is mindful of the existence of a relationship between AGLC and Sequent that provides the Company with an incentive to overstate its needs in these regards. As pointed out by Staff witness LeLash, who references testimony by Staff witness Thebert, the Company has failed to provide any data or analysis that would support the retention levels projected. (Tr. 504). Instead, Mr. LeLash points out that the Company has merely stated without providing specific details of why the capacity is needed that the referenced level of capacity retention it deems is necessary to maintain linepack, ensuring system integrity, and providing no-notice service and storage refill. (Tr. 504).

SCANA, Shell, and Georgia Natural concur with Staff and recommend that the Company not be allowed to increase in retained storage. In light of the Company's failure to meet its burden of proof regarding the level of retained storage, as well as the lack of creditability attached to the panel's testimony as a result of the incentive for AGLC/Sequent to overstate the need for this capacity asset, the Commission finds that the Company has not demonstrated that an increase in the volumes of storage is appropriate. As such, the Commission does not authorize an increase in the volumes of retained storage in this docket. The Commission finds that AGLC shall maintain its current approved volumes of retained storage. However, in the event that AGLC believes that it needs more than the current approved volumes, AGLC shall file a petition with the Commission to further consider the issue of retained storage at a later date.

H. Capacity Assets for FY 2002, FY 2003 and FY 2004 of the Capacity Supply Plan

Pursuant to O.C.G.A. 46-4-155(e)(6), a capacity plan shall describe the array of interstate capacity assets selected to meet the range of requirements selected by AGLC. In its filing, AGLC provided information regarding the range of requirements. However, AGLC did not describe the array of assets selected to meet the range of requirements as required by law.

AGLC stated that it has selected a proposal from its unregulated affiliate, Sequent, that would meet the requirements of FY 2002. AGLC also stated in its prefiled testimony that "AGLC believes that it is premature to make further specific selections for years 2 and 3 at this time." (Tr. 114). Although AGLC provided the volumes that would meet the requirements, it did not provide any further information regarding these volumes. In addition, AGLC did not provide any of the terms and conditions of the Sequent proposal in its prepared direct testimony. AGLC did state in the hearing that there was not an actual written contract with Sequent in existence.

AGLC stated in its testimony that Sequent was selected on the "best cost" criteria. (Tr. 108-109). It has not provided any documentation to support this statement. AGLC also stated that its plan would be to enter into the contract after the Commission approved its forecast. Entering into such a contract without demonstrating compliance with the criteria, of course, would raise some serious concerns regarding AGLC's ability to recover the costs of this capacity. Marketers are liable to pay only the costs of assets that are contained in the plan. O.C.G.A. § 46-4-155(e)(7). If there is uncertainty regarding compliance with the criteria, then there could be uncertainty regarding marketer liability to pay.

Witness Thebert stated in her testimony that "[i]t is Advocate Staff's position that AGLC is seeking approval of this three-year capacity supply plan with an alleged interstate capacity asset shortfall in FY 2002 through FY 2004. Additionally, from reading AGLC's testimony, it appears that when it does find additional interstate capacity to fill-in the 'gaps' in the current plan, it intends to do so without seeking Commission approval." (Tr. 531). Advocate Staff recommended that the Commission require AGLC to demonstrate that it has the necessary interstate capacity assets, pursuant to O.C.G.A. § 46-4-155(e) for FY 2003 and FY 2004 by filing amendments for FY 2003 and FY 2004 pursuant to O.C.G.A. § 46-4-155(e)(11) on or before August 1, 2002.

Given the Commission's finding that the Company shall keep in place the same level of interstate capacity assets to serve Georgia citizens that were approved in Docket 9305-U and given the decision to not adopt AGLC's design day demand forecast, Advocate Staff's recommendation on this issue becomes moot. The Company, if it believes that additional capacity is necessary, would be required to file an amendment to this Capacity Supply Plan. At that time, the Company will designate the array it proposes to meet any changes to the system needs.

In regard to whether the Sequent proposal meets the appropriate criteria, the Commission finds that this also becomes a moot issue as a result of the Commission's previous findings relating to the Company's forecast and level of interstate capacity assets.

I. System Modifications to Effect the Redelivery of Bundled Peaking Services

AGLC provided testimony in Tab C of its prepared testimony that discusses “system modifications and associated costs necessary to support redelivery of bundled peaking services required in this capacity plan filing under the two different scenarios.” (Tr. 427). The testimony stated that the first scenario would cost approximately \$885,000 and assumed that all of the incremental volumes are received and redelivered from multiple pipelines. The second scenario would cost approximately \$7.2 million and assumed that all of the incremental volumes are received and redelivered from one pipeline. (Tr. 428).

When questioned about the supporting documentation regarding these costs, AGLC Witness Sutton stated that there were no formal work papers (Tr. 447) and Mr. Sutton had “nothing but our [AGLC’s] own notes, scratch notes, things that would not have made any sense to anybody else.” (Tr. 448).

Advocate Staff Witness Willis recommended in his testimony that the Commission considers Mr. Sutton’s testimony for informational purposes only. He also recommended that “any type of major system modification proposal, for which the company may be seeking approval for a financial recovery, that falls outside of normal operation and maintenance costs, should be raised in the context of a rate case.” (Tr. 548).

The Commission finds that even if it were to approve the Company’s proposal, Mr. Sutton’s testimony would be used for informational purposes only and that any costs associated with system modifications to affect the redelivery of bundled peaking services would not be deemed approved or appropriate. However, since the Commission is not approving the proposed redelivery, the issue of system modifications is moot.

J. Agreements Between Sequent Energy Management, L.P. and AGLC

In the direct testimony of the Grey, Choi and Stallings panel, the Company’s current array of interstate capacity assets total 1,521,677 Dth/day, which is 166,700 Dth/day short of the 1,685,811 Dth/day needed for FY2002. (Tr. 105). The shortfall alleged by AGLC was represented by the panel to increase to 225,000 Dth/day for FY2003 and 286,000 Dth/day for FY2004. (Tr. 105). AGLC contended at the hearing that bundled peaking services would best meet these near-term shortfalls. (Tr. 105). The entity identified as being able to provide those services to AGLC pursuant to “best cost criteria” was Sequent Energy Management, L.P. (Tr. 108-109).

Advocate Staff, SCANA, Shell, Dynegy, and the CUCD all expressed serious concerns about this proposed Sequent Solution and further recommend that the Commission reject the proposal. As described above, the manner and other circumstances surrounding Sequent’s selection to fill this role are totally inappropriate.

Prior to arriving at its selection of Sequent as the entity to provide these peaking services, the Company issued an RFP (Staff's Exhibit 5) on January 30, 2001, for these services. As per witness Grey, AGLC first held a series of meetings to discuss the shortfall with Commission staff and certificated marketers in May of 2000. (Tr. 179). The first meeting was held on May 1, 2000 to discuss the then most recent design day forecast and how it was derived. (Tr. 179). The next meeting took place on June 8, 2000, to discuss the shortfall demand versus assets currently under contract and to reach a consensus on holding a formal request for proposals process for additional peaking assets. (Tr. 179). On August 25, 2000, AGLC held a meeting to discuss the proposed RFP with each marketer. (Tr. 179). On November 15, 2000, yet another meeting took place, during which AGLC presented to the marketers a draft RFP and asked that any comments regarding the document be sent to AGLC by November 30, 2000, so that responses could be given at the next meeting scheduled for December 12, 2000. (Tr. 179).

At the December 12, 2000 meeting, the revised RFP, which included the marketer comments, was reviewed and AGLC requested final approval or disapproval of the document by Jan 8, 2001. (Tr. 179). This December 2000 draft document, which was marked and tendered into evidence as SEMI 2, reflected a shortfall for Years 1,2 and 3 as being 55,000 Dth/day, 97,000 Dth/day, and 125,000 Dth/day, respectively. (Tr. 182-183). AGLC requested that marketers provide a list of companies who should receive the RFP by January 8. (Tr. 179). The RFP was sent out to over 30 entities on January 30, 2001—approximately 1 and one-half months after the December 12, 2000, meeting. (Tr. 179). The RFP's bidding deadline was set at March 2, 2001. (Tr. 179). AGLC requested that any marketer who desired to review the bids sign a confidentiality agreement. (Tr. 179). Additionally, the Company in its RFP also required that a confidentiality agreement be signed before bids could be reviewed. (Staff's Exhibit 5) All confidentiality agreements that were executed were signed by March 9, 2001. (Tr. 179). As of March 26, 2001, all marketers who had signed confidentiality agreements had been given copies of bids for their review. (Tr. 179).

What exactly occurred from the March timeframe from when bids were received and reviewed is not entirely clear. After the bids came in, Sequent reviewed them in its capacity as an advisor. (Tr. 184). However, at some unknown point in time, Sequent compromised the position of trust that it held as advisor to AGLC and in the absence of any authority "plundered" from the 35 or so bids that were submitted in response to the RFP for the purpose of using those portions of the proposals that had attractive features to aggregate them into a "bid" that met the Company's needs—allegedly at the best cost. (Tr. 108). Not surprisingly perhaps, Sequent was deemed by the Company as being the superior alternative in response to the RFP process and was selected to provide the peaking services alleged as being necessary. (Tr. 109).

Under cross-examination, the Grey, Choi and Stallings panel revealed many disturbing pieces of information that compounded concerns about the lack of integrity attached to the RFP process. Specifically, although the Company did not include it in its pre-filed testimony, Sequent Energy Management, L.P. is a company with which it is directly affiliated. (Tr. 149). Mr. Grey, testified that in his capacity as Sequent Vice President of System Optimization, he was responsible for

analyzing the system and matching the needs of the system to the available assets in the marketplace and making recommendations to improve the system. (Tr. 136-137). Mr. Grey also was pressed to state that in "optimizing" the system, he meant that he was using AGLC's capacity assets. (Tr. 137). When further pressed for information, Mr. Grey admitted that he was doing the same function since May 2001 for Sequent that he had been doing for AGLC in a consulting capacity in December 2000. (Tr. 175). One major difference, however, is that he presently was a participant in Sequent's Incentive Compensation program (Staff's Exhibit 7), for which he is eligible for financial incentive awards if Sequent's earnings before interest and income taxes are above a certain threshold (Tr. 139). When asked what financial incentives Georgia ratepayers would receive under this arrangement, Mr. Grey indicated that their profits would be seen through the two million dollars that was paid via the asset management arrangement that Sequent had entered into with the Company. (Tr. 140). Mr. Grey was not able to respond with any certainty to follow-up questions regarding how contributions would be placed into the Universal Service Fund ("USF") when Sequent was optimizing ratepayer assets. (Tr. 141, 173).

Other information materialized at the hearing that also casts doubt on the validity of the demand day forecast in this matter and the manner in which Sequent was selected as the winning provider. When questioned about the dramatic differences in the projected needs for incremental bundled peaking services for 2002-2004 from the December 2000 draft RFP to the January 2001 actual document, Mr. Grey initially stated that the numbers were just placeholders. (Tr. 182). Amazingly, on redirect examination—which occurred on the day after direct testimony and all cross-examination was complete—Mr. Grey seemed remarkably more informed about the change in these number (Tr. 395-397) and about a large number of other things on which he was subject to cross-examination the day before. (Tr., 389-422, generally). When asked if he signed a confidentiality agreement to review the bids as is required by the RFP (Staff's Exhibit 5) issued by the Company, Mr. Grey indicated that he did not. (Tr.185). In response to an inquiry whether Sequent submitted a formal bid in response to the RFP, Mr. Grey admitted that it did not. (Tr.185). Rather, in a memorandum dated July 11, 2001, (Staff's Exhibit 6), sent to Ms. Susan McLaughlin, CEO of AGLC, Mr. Grey recommended to Atlanta Gas Light that they consider contracting with Sequent to provide these services for peaking. (Tr.188).

Notwithstanding this occurrence, however, Mr. Grey admitted that there was no contract for these peaking services at this time because, in his words, it would be "premature" to enter into a contract for services until the forecast was approved by the Commission. (Tr. 190). Later in the hearing, when pressed by counsel for Shell for the amount of the shortfall for which Sequent would be providing the bundled peaking services, it was learned that Sequent's "raiding" of the bids would provide only 50% of the services being sought. A portion of the remaining 50% would be obtained from commitments that Sequent had entered into with one or more of its affiliates, the specific identity or identifies of which counsel for AGLC claimed were trade secret information and not subject to disclosure even in a sealed trade secret filing. (Tr.363-366). This fact was particularly disturbing in light of the testimony of Dynegy, Inc.'s witness David L. Cruthirds, who indicated that some of the bids that Dynegy submitted contained proposed demand charges in the amount of 30 cents as compared to the figure quoted in the July 11, 2001,

memo for this same service in the amount of \$10.25. (Tr. 603). Mr. Cruthirds, SCANA witness and former utility regulator Dr. Wright, as well as AGLC's own witnesses Mr. Grey and Mr. Choi all testified that they were not aware of the existence of any other circumstances in which an RFP process was handled like the one that is the subject of this proceeding. (Tr. 605-606; 657; and 199-200). In light of the above, parties have suggested that the increases projected by AGLC as being necessary to meet the needs of Georgians on design days may have been inflated for the benefit of the Company's affiliate, Sequent Energy Management, L.P., and, as a consequence, AGL Resources, the parent company of both entities as well.

Based upon the foregoing, as well as additional instances in the record that are too numerous to mention in this Final Order, the Commission has no confidence that the level of interstate capacity assets that are represented as being necessary by the Company are in fact appropriate.

In viewing the Company's Capacity Supply Plan in light of these circumstances, the Commission cannot find that the Company's selection of Sequent to provide all of the alleged need for incremental peaking services was based on the "best cost" criteria as required by the Commission's July 11, 2000, Order. In any event, since the Commission has not approved AGLC's design day demand forecast, the issue of whether the Sequent Solution is needed to meet the alleged increase capacity needs is moot.

Finally, the Commission is authorized to investigate the possibility of that the Bailment Agreement impairs the obligation of AGLC to discharge its public duties. Atlanta Gas Light Company v. Georgia Public Service Commission, 228 Ga. 347 (1971); Ga. Power Co. v. Ga. Public Service Commission, 211 Ga. 223, 228 (1954). AGLC has a duty to responsibly manage its regulated capacity assets. Failure to do so can harm consumers by, *inter alia*, increasing costs. Bailing regulated capacity assets to an entity that can use the excess capacity to make a profit for itself creates a conflict of interest when the Company relies on that same entity for advice as to how much capacity the Company needs to meet system requirements. This is particularly true when that entity is an affiliate of the Company. Further, bailing the assets without an adequate showing that ratepayers are receiving adequate compensation (by lower rates, money to the USF, or otherwise) for the use of the assets is inappropriate. Accordingly, the Commission finds that it is appropriate to deny the AGLC/Sequent Bailment Agreement.

V. ORDERING PARAGRAPHS

The Commission decides, based upon its evaluations and determinations as set forth in the preceding Findings of Fact and Conclusions of Law, and upon the evidence of record and the credibility attached thereto, that it is appropriate to order the following with respect to Atlanta Gas Light Company's 2001 Capacity Supply Plan filing.

WHEREFORE IT IS ORDERED,

- A. The Commission adopts a Capacity Supply Plan as set forth below and in the body of this Order.
- B. The Commission rejects the Company's design day demand forecast and orders that the Company shall keep in place the same level of interstate capacity assets to serve Georgia citizens that was approved in Docket 9305-U until and unless the Commission approves an amendment to the Capacity Supply Plan.
- C. AGLC shall file an amendment to the Capacity Supply Plan with the Commission to investigate the issue of additional interstate capacity, if the Company believes that more than the current volumes are necessary.
- D. AGLC is expressly prohibited from exceeding the 5% deliverability factor without first making a request to do so and obtain written approval by the Commission to do so.
- E. The Commission approves AGLC's annual demand throughput forecast.
- F. All future DDDC recalculations shall be based on the last peak day forecast approved in the capacity plan.
- G. The Commission adopts the following criteria for all future interstate capacity, storage, and peaking contracts:
 - 1. Contracts shall be selected on a best cost criteria evaluation, considering all relevant factors including but not limited to, transportation cost, terms and conditions, operational efficiencies, and reliability of capacity supply from the interstate transportation to the consumer's burner tip. AGLC shall provide documentation to the Staff demonstrating its compliance with this criteria;
 - 2. AGLC diligently shall seek to negotiate the shortest term of a contract that can be negotiated under existing laws, regulation and industry practice regarding the extension of existing contracts. AGLC shall provide documentation to the Staff demonstrating its compliance with this criteria;
 - 3. AGLC diligently shall seek to negotiate for the inclusion of a "regulatory out clause" in new contracts. AGLC shall provide documentation to the Staff demonstrating its compliance with this criteria;
 - 4. AGLC shall be required to include all active certified marketers in the capacity planning process. In addition, AGLC shall offer a vote to all active certified marketers regarding AGLC's selection(s) of capacity assets. AGLC must have a majority affirmative vote from active certified marketers by both number and market share;
 - 5. AGLC shall be required to follow the Commission-approved RFP Process;
 - 6. AGLC shall not enter into new contracts that do not meet all of the criteria set forth in this Order;

7. AGLC shall not enter into contracts with any entity, company, organization, or affiliate that did not submit a bid or proposal through the approved RFP process; and
 8. AGLC's failure to comply with any of the criteria established by the Commission may, in the discretion of the Commission, result in the continuation of the Company's existing capacity supply plan until such time a proposed plan is submitted for consideration that meets the Commission's directives regarding contracting and related procedures.
- H. AGLC shall use the following Request for Proposal process to contracting for all interstate capacity assets:
1. All RFPs shall be issued in a written document that shall include the criteria approved by the Commission for contracting with interstate capacity, storage, and/or peaking;
 2. All RFPs shall expressly and conspicuously set forth the following:
 - a. The issuance date of the RFP;
 - b. The date and time that the bidding will officially be closed;
 - c. The date(s) on which the proposals will be evaluated;
 - d. The date(s) on which bidding finalists will be notified to submit a "best and final" offer; and
 - e. The date on which the Company will notify all participants in the RFP process of the name of the bidder that was awarded the contract;
 3. If proposals submitted in response to an RFP do not meet the criteria or interstate capacity assets requirements set forth in the RFP so as to form an adequate pool of bids to choose from, AGLC must issue another RFP and notify all of the prior bidders that the Company is accepting proposals that meet revised requirements;
 4. AGLC must file with the Commission a copy of any RFP(s) that is issued and provide a copy to each active certified marketer at the same time the RFP is released to other potential bidders;
 5. AGLC must make all responsive bids available to the Commission Staff and marketers for review prior to designating any bid as the winning proposal;
 6. Active certified marketers should be obligated to enter into a confidentiality agreement with AGLC prior to viewing any of the proposals; and
 7. AGLC must make available any refreshed bids to all active certified marketers and the Commission Staff prior to selecting a proposal, if a bidder revises its offer at any time.
- I. AGLC shall continue to maintain the temporary MARS accounts for both ANR Storage and Cove Point LNG for each marketer, as approved in the Commission's April 19, 2001, Order until such time as a final decision is made regarding them by the Commission.
- J. AGLC shall maintain its current approved volumes of retained storage assets.

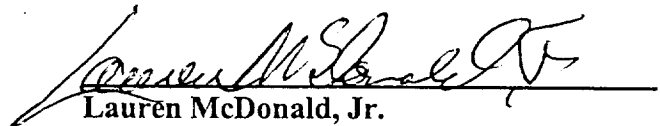
- K. AGLC shall file a petition with the Commission to fully investigate this issue of retained storage, if the Company believes that it needs more than the current approved volumes of retained storage assets.
- L. AGLC's Witness Sutton's testimony will be used for informational purposes only.
- M. The Commission expressly denies the AGLC/Sequent Bailment Agreement contract. The management of regulated assets is the responsibility of the regulated utility. The Company cannot bail regulated assets to the same entity that advises it as to how much capacity it needs to meet system requirements as that creates a conflict of interest.
- N. That all findings, conclusions and decisions contained within the preceding sections of this Order are hereby adopted as findings of fact, conclusions of law, and decisions of regulatory policy of this Commission.
- O. That any motion for reconsideration, rehearing or oral argument or any other motion shall not stay the effective date of this Order, unless otherwise ordered by this Commission.
- P. That jurisdiction over this matter is expressly retained for the purpose of entering such further Order or Orders as this Commission may deem just and proper.

The above by action of the Commission in Special Administrative Session on the 14th day of September 2001.



Reece McAlister
Executive Secretary

9-14-01
Date



Lauren McDonald, Jr.
Chairman

09-14-01
Date

CERTIFICATE OF SERVICE

DOCKET NO. 14060-U

IN RE: ATLANTA GAS LIGHT COMPANY'S 2001 – 2004 Capacity Supply Plan

I, the undersigned, do herewith certify that I have caused to be served the required copies of the enclosed Final Order of Advisory Staff to Atlanta Gas Light Company and to all other parties to the case as listed below by first class mail with proper postage affixed, unless otherwise indicated, as follows:

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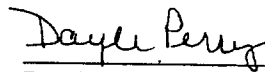
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*By Hand Delivery or Email

Respectfully submitted, this 14th day of
September, 2001



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